

**SEL/LPG/cas**

**5/2/08**

**08-023**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

**PATRICK ARNOLD and  
ELIZABETH ARNOLD,**

**Plaintiffs,**

**V.**

**BAXTER HEALTHCARE CORPORATION,**  
**a corporation,**

**Defendants.**

) ) ) ) ) ) ) ) ) )

**) Case No. 08-cv-02168**

**) Hon. James F. Holderman**

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STAY**

Plaintiffs, PATRICK ARNOLD and ELIZABETH ARNOLD, by and through their attorneys, SUSAN E. LOGGANS & ASSOCIATES, responds in opposition to defendant's Motion to Stay. In support of this motion, plaintiffs state:

1. On April 16, 2008, defendant filed its Notice of Removal. (Doc. 1)
2. On April 18, 2008, defendant filed its Motion to Stay. (Doc. 6)
3. The hearing on defendant's Motion to Stay is presently scheduled for May 8, 2008.
4. Plaintiff filed its Motion to Remand on May 1, 2008. (Doc. 15) The Motion to Remand is presently scheduled for hearing on May 8, 2008.
5. Plaintiffs object to defendant's Motion to Stay as being premature in that this Court has not yet ruled on plaintiffs' Motion to Remand. Federal courts must establish subject-matter jurisdiction as a threshold matter in every lawsuit. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-102 (U.S. 1998); *McCready v. White*, 417 F.3d 700, 702 (7th

Cir. Ill. 2005). Furthermore, it is proper and efficient for a federal district court to consider a plaintiff's remand motion even where actions are already pending before the MDL panel, but particularly, such as in this case, where a case is merely proposed MDL. *See Robinson v. Ortho-McNeil Pharm., Inc.*, 533 F. Supp. 2d 838, 841 (S.D. Ill. 2008) (citations omitted) (denying removing defendants' request for stay "so that the determination as to the existence of federal subject matter jurisdiction" could be made by the MDL court, because questions regarding the existence of subject matter jurisdiction should "not remain pending long in federal court" and it was as qualified as any other federal court to evaluate the factors establishing federal jurisdiction); *Utah v. Eli Lilly & Co.*, 509 F. Supp. 2d 1016, 1020 (D. Utah 2007) ("Addressing [a] [p]laintiff's [m]otion to [r]emand is even more justified [] where the case is not yet properly MDL litigation and nothing from the case is pending before the MDL.").

WHEREFORE, Plaintiffs request that this Court strike defendant's Motion to Stay as being premature or, in the alternative, to set a briefing schedule on this motion so plaintiffs have an opportunity to respond.

Respectfully submitted,  
 SUSAN E. LOGGANS & ASSOCIATES  
 Attorneys for Plaintiffs

By: /s/Susan E. Loggans

Susan E. Loggans, #1684663  
 Laura P. Gordon, #6294274  
 SUSAN E. LOGGANS & ASSOCIATES, P.C.  
 33 North LaSalle Street, Suite 3500  
 Chicago, IL 60602  
 (312) 201-8600

(312) 201-1180 (fax)

CERTIFICATE OF SERVICE

I certify that on May 5, 2008, I electronically filed the attached Plaintiffs' Response in Opposition to Defendant's Motion to Stay with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Leslie M. Smith  
Renee D. Smith  
Andrew P. Bautista  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601

SUSAN E. LOGGANS & ASSOCIATES  
Attorneys for Plaintiffs

By: /s/Susan E. Loggans

Susan E. Loggans, #1684663  
Laura P. Gordon, #6294274  
SUSAN E. LOGGANS & ASSOCIATES, P.C.  
33 North LaSalle Street, Suite 3500  
Chicago, IL 60602  
(312) 201-8600  
(312) 201-1180 (fax)